

VII. The Commission Should Allow EMSP Licenses to be Freely Transferable

SBC strongly disagrees with the Commission's proposed limitations on transfer of EMSP licenses. NPRM ¶ 42. The Commission should allow EMSP licenses to be freely transferred, to facilitate the migration of those licenses to those best able to serve the public. This is particularly true in this market where existing SMR operators are currently providing service in many parts of licensed areas, unlike the situation when cellular was initially licensed or the current state of PCS. Where a licensee is actually operating a system, a transfer allows the system to migrate to a carrier that can and will value and operate it, whereas licenses in unserved areas are more likely to lead to speculation in licenses. SBC does support the proposal to allow licensees to lease their spectrum to interested parties, including wireline common carriers.

VIII. EMSP Construction Requirements Should Approximate Those of Cellular Carriers

With respect to construction requirements, the watchword should again be parity. SBC generally supports the Commission's proposed construction requirements in NPRM ¶ 39 to the extent that they approximate the requirements placed on cellular carriers. These include the following requirements: (1) an 800 MHz EMSP system is required to ultimately cover either 80% of the land area or serve 80% of the population within its BTA/MTA with a signal strength of 40 dBu or greater

to that area; (2) licensees have up to five years after the license grant to meet this requirement; (3) if the EMSP system does not meet the coverage requirement five years from the date of EMSP license grant, the licensee will lose the exclusive right to use its channels throughout the BTA/MTA, though such licensee would be permitted to continue to operate any stations already constructed and in operation in accordance with section 90.621(b); and (4) a licensee that loses its EMSP license would not be permitted to reapply for another EMSP license in the same market for six months from the date the EMSP license is cancelled.

By the same token, the time provided for a licensee to construct its system should not be dependent on the size of the proposed system; a new licensee should not be required to meet a benchmark such as serving 20% of the area or population in the service area within two years after a license grant; and the same construction standard should apply for new licensees as well as converting existing constructed and operational stations to wide area operations. NPRM ¶ 39.

IX. The Commission Should Not Require Licensees to Escrow Their Estimated Construction Budgets

The Commission's proposal that an EMSP licensee be required to make a reasonable estimate of the cost of constructing a system that would meet the minimum coverage requirements and to place a sum equal to that estimate in an escrow account or to obtain a performance bond in that amount, NPRM ¶ 40, is dramatically skewed in favor of existing wide-

area SMR licensees, as is its proposed initial licensing framework. The financial resources necessary to escrow in advance the entire estimated construction budget to build out a system to 80% coverage of a service area, particularly one as large as an MTA or BTA, are enormous. In addition, the penalties the Commission would impose for failure to accurately predict a budget are severe - forfeiture of the entire underlying license.²¹ By contrast, an existing operator need only estimate and fund that percentage of a system that is the difference between its existing coverage and the requisite 80% coverage, and a licensee that had enough existing stations at the time the EMSP license was granted to satisfy the minimum construction standards would not be required to place funds in escrow or purchase a performance bond.

These proposed requirements also runs counter to the desire for diversity and the ability of smaller entrepreneurs to enter the business. Few companies could meet these onerous construction budget requirements. In the cellular marketplace, by contrast, there are many small operators

²¹In the Commission's proposed rule 90.677(f) it states that if a licensee forfeits its license for failure to meet the requirements of paragraph (b) (relating to 80% coverage), it will retain an SMR Category license for any stations already constructed and placed in operation at the time the license was cancelled. Rule 90.677(d), however, which provides that a licensee's license is cancelled if it withdraws excess funds from its escrow account, does not include a similar provision allowing the licensee to retain an SMR license. It is not clear whether this is an oversight on the Commission's part or an additional penalty.

serving the smaller areas allocated to cellular service areas.

SBC agrees that some assurance that a licensee is committed to, and capable of, constructing a viable and efficient wide area system is necessary, but submits that the best assurance is not an at-your-peril advance funding of the entire system, but a mechanism that allows licensees to be held by those who value them.

X. The Commission Should Adopt Those Technical Rules That Put EMSP on a Par with other Wireless Services

SBC supports the Commission's proposals on the following technical issues: (1) allowing EMSP licensees, rather than licensing each individual base station, to electronically file an application to modify their licenses whenever an individual facility is added or modified. and requiring licensees to

to each channel in a designated area, NPRM ¶ 31. The regulatory parity that the Commission should be seeking requires that EMSPs be given the same flexibility with respect to these issues as has been given to other wireless

XI. Conclusion

SBC has had and maintains an interest in the SMR market, which includes the proposed EMSP licenses, and its sale of MPS assets will not terminate that interest. SBC urges the Commission to eliminate the unsupported and insupportable restriction on wireline common carrier eligibility for SMR and EMSP licenses. It further urges the Commission to treat all existing and newly licensed SMR and EMSP providers equally in terms of service area, channel allocation (to the extent possible), licensing and regulation.

Respectfully submitted,

SOUTHWESTERN BELL CORPORATION

By: Paula J. Fulks
James D. Ellis
William J. Free
Paula J. Fulks
175 E. Houston, Rm. 1218
San Antonio, TX 78205
(210) 351-3424

ATTORNEYS FOR
SOUTHWESTERN BELL CORPORATION

July 19, 1993

EXHIBIT A

HEAVY LINE INDICATES MTA BOUNDARY

SHADED AREAS INDICATE MSAS

